IN THE

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.

MILE BRANCH COAL COMPANY, *Petitioner*,

v.

UNITED MINE WORKERS OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Mile Branch Coal Company of America (herein called "Mile Branch" or "employer"[1]), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered January 12, 1961, in

[1] Herein the United States Court of Appeals for the District of Columbia Circuit is referred to as either the "Court of Appeals" or "District Court".

Case Number 15,907, styled Mile Branch Coal Company, Appellant v. United Mine Workers of America, Appellee wherein the District Circuit affirmed the order of the United States District Court for the District of Columbia[3] granting the Appellee's Motion for a Summary Judgment (A. 1a-2a).[4]

A certified appendix record in said case, together with the proceedings in the District Circuit, is furnished herewith in accordance with the Rules of this Court.

OPINION BELOW

The District Circuit's opinion appears in the Appendix hereto at pages 1a-2a and in the certified record. It is not yet reported in the official reports.

JURISDICTION

The Court of Appeals' judgment affirming the trial court's granting of appellee's motion for a summary judgment, as aforesaid, was entered January 12, 1961 (A. 1a-2a). The jurisdiction of this Court to review the judgment in question by writ of certiorari is invoked under 28 U.S.C., Sections 1254 (1) and 2101 (*c*).

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[2] Herein United Mine Workers of America will be referred to as "UMWA" or "UMW" or "International Union".

[3] Herein the United States District Court for the District of Columbia will be referred to as the "district court" or "trial court".

[4] Herein the abbreviation "A" refers to the Appendix to the instant Petition, while the abbreviation "R" refers to the printed certified record.

BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The jurisdiction of the United States District Court was invoked under the provisions of Section 301 of the Labor Management Relations Act of 1947, Act of June 23, 1947, c. 120, Title III, § 101; 61 Stat. 156; 29 U.S.C.A., § 185. The basis for Federal jurisdiction of the complaint, in addition to said statute, was diversity of citizenship between the plaintiff and the defendant and the amount involved.

QUESTIONS PRESENTED

1. Where (1) the settlement of disputes section of collective bargaining agreements antedating 1947 provided that mine workers shall not engage in a work stoppage pending settlement of disputes under grievance machinery procedures and such agreements contained other "no strike" clauses, and (2) under the Labor Management Relations Act, 1947, labor organizations were subjected to money judgments derived from actions authorized under Section 301 for a breach of contract, and (3) in 1947 and 1948 UMW and coal operators signatories to the National Bituminous Coal Wage Agreements of 1947 and 1948 deleted such "no strike" clauses therefrom and expressly covenanted that the "no strike" clauses in prior agreements were rescinded and made null and void, but also covenanted that all disputes shall be settled exclusively under grievance machinery procedures set forth in such contracts, and (4) in 1950 and 1951 UMW and coal operators signatories to the National Bituminous Coal Wage Agreements of 1950 and 1951 carried forward the 1947 and 1948 Agreements' express covenants that the "no strike" clauses in prior agreements were rescinded and made null and void, and also carried for-

ward the 1947 and 1948 Agreements' express covenants that all disputes shall be settled exclusively under grievance machinery procedures set forth in such contracts and, in addition, affirmed the signatories' intention to maintain the integrity of said contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment of disputes under grievance machinery procedures set forth in said contract, and (5) signatories to the 1952 Agreement also carried forward therein the 1950 Agreement's express covenants that the "no strike" clauses in prior agreements were rescinded and made null and void, but deleted the 1950 Agreement's covenant that stoppages be settled exclusively by the grievance procedures of the contract and also, the covenant that the signatories exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment of disputes under the grievance machinery procedure, and, in lieu of such covenants, agreed and affirmed that they shall maintain the integrity of said 1952 Agreement and that all disputes and claims which were not settled by agreement shall be settled by the grievance machinery procedures set forth in said contract, is a stoppage of work pending settlement of disputes which are cognizable under the grievance procedures prescribed by the 1952 Agreement so as to constitute a violation thereof and to subject UMW to damage actions under Section 301 of the Act?

2. Whether in an action for breach of contract under Section 301 of the Act by a coal operator signatory to the 1952 Agreement against UMW arising from a strike by members of a local union, the district court's

granting of summary judgment and the District Circuit's approval thereof on the ground that a work stoppage without first resorting to the grievance machinery procedures set forth in said contract did not constitute a breach of contract were proper, where the record (for the purpose of the consideration of said motion) disclosed (1) that although the 1952 Agreement did not contain a "no strike" clause, it did provide that the parties agreed to maintain the integrity of the agreement and to settle all disputes and grievances through the machinery set forth therein for the settlement of local and district disputes, (2) that the strike was used to settle disputes which were cognizable under the grievance machinery procedures in said contract, (3) that the strike was not a spontaneous or "wild-cat" strike, (4) that UMW either induced the strike or ratified, adopted, encouraged or prolonged the strike, and (5) that UMW refused the operator's requests to settle the dispute under the said grievance machinery procedures?

3. Where signatories to a collective bargaining agreement had agreed that they would maintain the integrity of the contract and would settle all disputes by means of the grievance machinery procedures contained therein, does a strike to settle disputes cognizable under said grievance machinery procedures constitute a breach of contract entitling the operator to recover damages under Section 301 of the Act, (1) notwithstanding the absence of a "no strike" clause in said agreement and/or (2) notwithstanding the signatories' express covenant therein that the "no strike" clauses in prior agreements were rescinded and made null and void?

STATUTES INVOLVED

The pertinent statutory provisions involved are Sections 301(a), (b) and (e) of the Labor Management Relations Act, 1947 (29 U.S.C., Section 185(a), (b) and (e), and appear in the Appendix hereto (p. 3a).

STATEMENT OF THE CASE

I. THE PLEADINGS, TRIAL PROCEEDINGS AND THE DISTRICT CIRCUIT'S JUDGMENT

(a) The Pleadings

Mile Branch Coal Company, by Complaint filed in the trial court, claimed that the UMW had breached its agreement with Mile Branch and, pursuant to Section 301 (USCA =185) of the Act, sought damages in the amount of $2,700,000.00 (R. 10) upon allegations that said UMW had breached the National Bituminous Coal Wage Agreements[3] effective during 1953 by inducing a strike at Mile Branch mines during that period, during which and previous to such strike UMW agents refused to arbitrate matters in dispute and to follow the contractual provisions for adjustments of disputes and directed, authorized or ratified the strike by Union members and Mile Branch employees.

The Complaint alleged that Mile Branch, an Ohio corporation with offices formerly in Corning, Ohio, and now in Pittsburgh, Pennsylvania, (R. 6-7) during the period prior to October 1, 1952, and through June 9, 1953, was in possession and control of a tract of land and of a coal preparation plant in Pleasant and Bear-

[3] The National Bituminous Coal Wage Agreement of 1950 (R. 23-49) will be called the "1950 Agreement"; the Agreement as amended January 18, 1951, the "1951 Agreement", and the 1950 Agreement as amended September 29, 1952, (R. 19-21) the "1952 Agreement".

field Townships, Perry County, Ohio, and was engaged in the business of deep mining bituminous coal from said tract (R. 7). Mile Branch supplied all the coal mined in said location to Denise Coal Company, a Pennsylvania corporation, under an agreement dated January 2, 1953. Denise Coal Company in turn sold the coal through The Sunday Creek Coal Company, an Ohio corporation, as sales agent. Mile Branch, prior to October 1, 1952, and through June 9, 1953, had supplied coal under this agreement and had built up and established a growing and profitable coal mining business (R. 7-8).

The Complaint further alleged that UMW is an unincorporated association or a labor organization within the meaning of the Labor Management Relations Act of 1947, with its principal office in the District of Columbia, and that it represents employee members in an industry affecting commerce (R. 7). Local Union No. 9135 and District No. 6 of the UMW are subordinate branches or divisions of the International Union and are established and chartered by the International Union, pursuant to the provisions of its Constitution (Plf. Ex. No. 3).

UMW, the parent organization, was the exclusive bargaining representative of Mile Branch's employees. District No. 6 is one of the territorial subdivisions formed by the International. Local Union No. 9135 was a subordinate unit, chartered by the International, and fell within the territorial jurisdiction of the District. The Local represented only Mile Branch's employees. Each of said parties, the International, District, and Local, has its own constitution and by-laws.

By its Complaint, Mile Branch further claimed that UMW, together with District No. 6, had entered into

a collective bargaining agreement with Mile Branch, known as the National Bituminous Coal Wage Agreement of 1950, as amended September 29, 1952. Said agreement became effective as of October 29, 1952, and terminated on September 29, 1953 (R. 12-19). Mile Branch claimed that UMW had expressly guaranteed to preserve the integrity of the contract, which included provisions specifying grievance procedures for settlement of disputes arising thereunder; that such a dispute arose between Mile Branch and its employees; and that the International Union not only had failed to seek enforcement of the settlement provisions, but had induced, encouraged and prolonged a walkout at the mine in express violation of those provisions.

Mile Branch, by its Complaint, further alleged that on June 9, 1953, the employees at its mines and preparation plant, without any legal cause or justification, went on strike and refused to work (R. 8). Mile Branch alleged that UMW, through its agents and organizers, particularly in District No. 6, induced, directed and encouraged Mile Branch's employees to strike and refuse to work (R. 8-9), that UMW refused to settle certain disputes under the grievance procedure provided in the agreement (R. 9); and that UMW thereby had violated the provisions of the aforesaid collective bargaining agreement between the parties (R. 9).

Mile Branch, as a result of UMW's inducing, directing and encouraging said strike and refusing to proceed under the grievance procedure provided in the agreement for the settlement of disputes, was forced to shut down and abandon its mining operations and to lose its mining business. Its mining equipment was

seriously damaged or destroyed. It became liable to Denise Coal Company for monies that Denise would have realized from the mining and sale of said coal (R. 9-10). Mile Branch sought damages in the amount of $2,700,000.00, together with costs and reasonable attorney's fees (R. 10).

In its answer (R. 20-49), UMW admitted that it was the collective bargaining agency representing the employees at said mining operation and that the National Bituminous Coal Wage Agreement of 1950, as amended September 29, 1952, was in full force and effect on June 9, 1953, (R. 21- 22). UMW, however, claimed that Mile Branch violated the provisions of the Federal Mine Safety Code and Mine Safety Program as set forth and provided in the National Bituminous Coal Wage Agreement of 1950, as amended September 29, 1952; that Mile Branch failed and refused to pay to the United Mine Workers of America Welfare and Retirement Fund the amounts due to be paid by it to said Fund under the terms and requirements of said contracts; that Mile Branch defaulted on the wage and vacation payments due by it to its employees under the terms and provisions of said contracts; and that such refusals to work or quittings of labor, if any occurred, were voluntary refusals and quittings of work by employees in good faith because of abnormally dangerous conditions for work at their place of work and because of Mile Branch's failure and refusal to pay the sums due to the Welfare Fund and to its employees, all as required by and due to be paid by it under such contracts (R. 22).

(b) The Facts Upon Which the District Circuit Held That the Strike Was Not Violative of the 1952 Agreement

The record upon which the instant application for certiorari is based is a very narrow one. In effect, the motion for summary judgment was tantamount to a demurrer to the Complaint, augmented by the presence in the record of the National Bituminous Coal Wage Agreement of 1950 (R. 23-49), as amended September 29, 1952 (R. 12-19), and the various collective bargaining agreements in the bituminous coal industry beginning with 1941 and ending with the amendment of September 29, 1952. These agreements are contained in a brochure which was admitted as an exhibit in the two trials which were held in this case prior to the entry of the summary judgment.[6]

Mile Branch, a coal producer in Perry County, Ohio, was a signatory to the 1952 Agreement, effective during the period starting June 9, 1953, when the strike which resulted in the operator's loss of its business occurred. The District Circuit's agreement with UMW's assertion that the strike did not violate the 1952 Agreement, necessitates examination of pertinent provisions thereof and the collective bargaining history antecedent thereto reflecting the meaning of such provisions.

Collective Bargaining Agreements Antedating 1947 Contained Waivers of the Right to Strike

The basic collective bargaining agreement between the UMW and the coal operators is the Appalachian Joint Wage Agreement, executed June 19, 1941, effective April 1, 1941 to March 31, 1943, herein referred

[6] See the history of the prior two trials as outlined hereinafter under the heading "District Circuit's Judgment".

to as the "Appalachian Agreement". In subsequent collective bargaining negotiations between the signatories, new agreements as such were not executed. The signatories merely carried forward and preserved the terms and conditions of prior agreements, and repealed or amended certain provisions thereof. For example, the 1947 Agreement (subject to the amendments, modifications and supplements provided therein) merely carried forward and preserved the terms and conditions of the following prior agreements:

1. the Appalachian Joint Wage Agreement of 1941,
2. the Supplemental Six-Day Work Week Agreement,
3. the National Bituminous Coal Wage Agreement of 1945, and
4. all various District Agreements (based upon the aforesaid basic agreements) as such district agreements existed on March 31, 1946, subject to the terms and conditions of the 1947 Agreement and as amended, modified and supplemented thereby.

Collective bargaining agreements in the bituminous coal industry, antedating 1947, contained specific waivers of coal miners' right to strike.

The Appalachian Joint Wage Agreement of 1941. (Ex. 2) provided for the settlement of disputes between the Mine Workers and the Operators through grievance machinery procedures therein set forth and provided in said section:

> "Pending the hearing of disputes, (under grievance machinery herein provided) the Mine Workers shall not cease work because of any dispute; and a decision reached at any stage of the proceeding shall be binding on both parties hereto, and shall not be subject to reopening by any other

party or branch of either association except by mutual agreement."

The Appalachian Agreement then provided under the heading "Illegal Suspension of Work" (Ex. 2) that:

". . . A strike or stoppage of work on the part of the Mine Workers shall be a violation of this Agreement . . ."

The 1945 Agreement provided that:

"For the duration of this Agreement no strikes shall be called or maintained hereunder."

The Taft-Hartley Act and the Subsequent Rescission in the 1947 and 1948 Agreements of the No-Strike Clauses

On June 23, 1947, Congress enacted the Taft-Hartley Act, subjecting labor organizations, among other matters, to money judgments derived from actions authorized under Section 301 for breach of contract. The 1947 Agreement, executed July 8, 1947, after enactment of the Taft-Hartley Act, and effective July 1, 1947 to June 30, 1948, omitted the "No-Strike" clauses and related covenants of the 1941 and 1945 Agreements.

The preamble to the 1947 Agreement provided that (Ex. 2):

". . . It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement during such time as such persons are able and willing to work."

In the 1947 Agreement, the contracting signatories, in a section styled "Miscellaneous" following the section styled "Settlement of Legal and District Disputes", expressly provided that the prior "No-Strike" clauses were "rescinded, cancelled, abrogated and made null and void". Subsection 1 of the "Miscellaneous" section read thus:

> "Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any 'no strike' or 'Penalty' clause or clauses or any clause denominated 'Illegal Suspension of Work' are hereby rescinded, cancelled, abrogated and made null and void."

In Subsection 3 of the "Miscellaneous" section, the parties agreed:

> "The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or action growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the Settlement of Local and District Disputes' section of this Agreement; or, if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry."

The 1948 Agreement carried forward the 1947 Agreement and terminated by its own terms on June 30, 1949.

The 1950 Agreement

By specific recitals in the 1950 Agreement, the terms of certain antecedent agreements in the bituminous coal industry were carried forward, subject to the

terms and conditions of the 1950 Agreement (Ex. 2; R. 23-49). Moreover, the limitations upon the right to strike contained in the 1941 and 1945 Agreements, which were first rescinded in the 1947 Agreement, were likewise cancelled under the 1950 Agreement terms.

The 1950 Agreement, in a section styled "Settlement of Local and District Disputes" (Ex. 2; R. 41), set forth the settlement steps as (1) between the aggrieved party and mine management, (2) through mine management and the Mine Committee, (3) through District representatives and a commissioner representative (where employed) of the coal company, (4) by a board consisting of four members, two designated "by the Mine Workers and two by the Operators" and (5) reference to an umpire.

The precise language of subsections 1 and 3 under "Miscellaneous" of the 1947 Agreement (Ex. 2; R. 42-43) was placed in the 1950 Agreement.

The 1950 Agreement added Subsection 4 to the section styled "Miscellaneous". Subsection 4 of "Miscellaneous" provided (Ex. 2; R. 43):

> "4. The United Mine Workers of America and the Operators signatory hereto affirm their intentions to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement."

Although the 1950 Agreement, as did the 1947 and 1948 Agreements, contained provisions specifically repealing no-strike clauses in prior agreements, it (1950 Agreement) provided that stoppages, in addition to

disputes, were to be settled exclusively by procedures under the grievance machinery and that UMW and the Operators affirmed "their intentions to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement."

The 1951 Agreement

The 1951 Agreement, which became effective February 1, 1951, carried forward the foregoing provisions of the 1950 Agreement.

The 1952 Agreement

The 1952 Agreement preserved the deletion and repeal of the "no-strike" and related clauses in the 1941 and 1945 Agreements.

The parties signatory to the 1952 Agreement amended the "Miscellaneous" section by striking out Subsection 4 and amending Subsection 3 to read as follows:

> "3. The United Mine Workers of America and the Operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts."

In short, the 1952 Agreement's covenant that disputes and stoppages be settled "exclusively" by the grievance procedures of the contract was amended. The 1950 "best efforts" obligation contained in Subsection 4 of the "Miscellaneous" section was stricken from the 1952 Agreement. In lieu thereof, the 1952 Agreement provided in the amended Subsection 3 that the parties signatory ". . . agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled . . ." by the grievance machinery provided therein.

(c) The District Circuit's Judgment

Two trials preceded the entry of the summary judgment in this matter by the district court and the subsequent approval thereof by the District Circuit. The first trial was held before the Honorable Alexander Holtzoff, District Judge, and a jury on May 19 and 20, 1958. The first trial was limited to the issue of agency concerning one of UMW's subordinate organs and resulted in a directed verdict for UMW on May 20, 1958. The district court granted defendant's motion for a directed verdict on the ground that Mile Branch had failed to prove a prima facie case that the officers of District 6 were agents of the International Union with authority to enforce the settlement provisions of the contract. On appeal, in an opinion by David L. Bazelon, Circuit Judge, the aforesaid judgment was reversed and the case remanded for trial by the District Circuit in its decision entitled *Mile Branch Coal Company v. United Mine Workers of America*, 105 U.S. App. D.C. 321, 266 F. 2d 919. Upon remand, a second trial was held before the Honorable Charles F. McLaughlin, District Judge, and a jury. The second trial

began January 5, 1960, and, after twenty-one days of trial on the issues of liability and damages, it was submitted to the jury on February 11, 1960, for determination. The second trial ended on February 15, 1960, in a disagreement of the jury (R. 3-4).

A third trial was scheduled to begin on March 8, 1960, but between the conclusion of the second trial and the date set for the third trial, UMW filed a motion for summary judgment (R. 49) which was argued and decided on March 8, 1960. UMW's motion for summary judgment was based upon its contention that the District Circuit was bound by its decision in *International Union, U.M.W.A.* v. *N.L.R.B.*, 103 U.S. App. D.C. 207, 257 F. 2d 211, that a walk-out or strike under the 1952 Agreement, here involved, did not constitute a breach of contract, and that a provision agreeing to arbitration of disputes according to "grievance machinery" prescribed in the contract was merely a "gentlemen's agreement" and not enforceable otherwise between the parties.

On September 26, 1958, the Sixth Circuit Court of Appeals held differently in *Lewis (United Mine Workers of America)* v. *Benedict Coal Corporation*, 259 F. 2d 346, the opinion in that case being made by then Circuit Judge, now Associate Justice Potter Stewart of the Supreme Court. Respondent in the instant case, UMW, applied to the Supreme Court for a writ of certiorari in the *Benedict* case, urging as one of its reasons for the granting of the writ of certiorari, conflict between the *Benedict* decision and the opinion of the District Circuit in the *International* case. The petition was granted (359 U.S. 905) and the case had been argued in the Supreme Court and was pending when the second trial of the instant case began before Judge McLaughlin on January 5, 1960.

Several days after the jury was discharged in the second trial, the Supreme Court by an equal division, since Mr. Justice Stewart had disqualified himself, affirmed without opinion the decision of the Sixth Circuit Court of Appeals (361 U.S. 459).

Thereupon, as hereinbefore stated, UMW made the motion for summary judgment here involved on the ground that the *International* case had by the 4-4 opinion of the Supreme Court been restored to full force and effect in the District of Columbia Circuit.

The Court of Appeals for the District of Columbia Circuit in a P. C. opinion entered on January 12, 1961, affirmed the order of the district court granting UMW's motion for summary judgment (A. 1a-2a), stating:

> "Appellee's motion for summary judgment was granted by the District Court upon the authority of this Court's decision in *International Union, UMW* v. *NLRB*, 103 U.S. App. D.C. 207, 257 F. 2d 211, wherein we held that a strike in similar circumstances was not a breach of the Agreement. Contra, *Lewis* v. *Bendict Coal Corp.*, 259 F. 2d 346 (6th Cir. 1958), aff'd by an equally divided Court, 361 U.S. 459."

The District Circuit thereby recognized that there is a conflict between the Courts of Appeal relating to the question here presented. The District Circuit's ruling is based upon the premise that the district court was correct in holding that it was bound by the ruling of the District Circuit in the *International* case and that, in the absence of a contrary decision by a higher court, the district court was bound to adhere to the principles of law laid down by the District Circuit. The District Circuit's ruling was further based upon

the premise that, based upon the doctrine of *stare decisis*, it, too, was bound by its ruling in the *International* case, since one panel of the District Circuit will not attempt to overrule a recent precedent handed down by another panel.

REASONS FOR GRANTING THE WRIT

1. The District of Columbia Circuit has decided a federal question important in the processing of collective bargaining agreements, in conflict with an applicable, recent decision of the Sixth Circuit in *Lewis (United Mine Workers of America) v. Benedict Coal Corporation* (C.A. 6, 1958) 259 F. 2d 346, aff'd. (1960) 361 U.S. 459, 4 L. ed. 2d 442, and also in conflict with the applicable decisions of the first Circuit in *W. L. Mead, Inc.* v. *International Brotherhood of Teamsters, etc.* (D.C., Mass.), 126 F. Supp. 466, aff'd (C.A. 1, 1956), 230 F. 2d 576, the Fourth Circuit in *United Construction Workers* v. *Haislip Baking Co.* (C.A. 4, 1955), 223 F. 2d 872, 873 and of the Sixth Circuit in *Garmeada Coal Co.* v. *International Union of the United Mine Workers, etc.* (D.C., E.D. Ky.), 122 F. Supp. 512, aff'd. (C.A. 6, 1956), 230 F. 2d 945.

This Court previously granted an application for writ of certiorari in the *Benedict* case (359 U.S. 905, 3 L. ed. 2d 570). The Supreme Court, by an equal division, since Mr. Justice Stewart had disqualified himself, affirmed without opinion the decision of the Sixth Circuit Court of Appeals (361 U.S. 459, 4 L. ed. 2d 442-446). Although this question became *res adjudicata* as between the UMW and the Benedict Coal Corporation, it did not become a controlling precedent on the precise question presented for review. This Court, in granting the writ of certiorari in the *Benedict* case,

recognized that the Sixth Circuit had rendered a decision in conflict with the decisions of the District Circuit on the same matter and had decided an important question of federal law which had not been, but should be, settled by this Court. In view of the 4-4 decision in the *Benedict* case, there still remains the same conflict between the decisions of the various Courts of Appeal on this question and further, an important question of federal law, which should be, but has not been, settled by this Court.

The conflict of the District Circuit's conclusions in the instant case and also in the *International* case with the decisions of the Courts of Appeal for the First, Fourth and Sixth Circuits is obvious. This conflict with the decision of other Courts of Appeal should appropriately be reviewed by this Court. This is particularly true where, as here, the collective bargaining agreement is one covering the bituminous coal industry and the conditions of employment of hundreds of thousands of coal miners.

The District Circuit's conclusion in the instant case also poses issues important in the administration of labor law, warranting review by this Court. *Local Union No. 10, etc.* v. *Graham*, 345 U.S. 192.

The applicable collective bargaining contract, the 1952 Agreement, provided various procedural steps for the settlement of grievances and disputes such as those that were concededly involved herein, culminating, as a last step, in referral to an umpire for binding arbitration. The 1952 Agreement also bound Mile Branch and its employees to "maintain the integrity" of the contract and provided that "all" disputes cognizable under the grievance and arbitration machinery

"shall" be settled thereunder. Petitioner submits that it was the purpose of these provisions to afford a peaceful procedure as the exclusive and obligatory means of settling disputes cognizable under that procedure, thereby excluding the right to strike in connection with such disputes and regardless of the absence of an express "no strike" commitment in the contract.

The District Circuit below relied upon its earlier decision in *International Union, United Mine Workers of America* v. *National Labor Relations Board*, *supra*, a proceeding involving a charge of unfair labor practices by unions. The District Circuit, in the *International* case, 103 U.S. App. D.C. 287, 257 F. (2d) 211, at 257 F. 2d 218, in characterizing subsection (3) of the Miscellaneous article of the contract as a "gentlemen's agreement" and not as a binding legal obligation not to strike, stated:

> "It is of course fair to ask what the court thinks subdivision 3 of the 'Miscellaneous' article of the contract meant. We think it was, in effect, a 'gentlemen's agreement' that the desirable way to settle disputes was by the use of the grievance machinery; that the responsible officials of the union hierarchy would do their best to see that the procedure was followed; that they would put such pressure as seemed to them to be wise and likely to be effective upon the members and the inferior echelons in the hierarchy to induce or coerce them to refrain from striking. It is likely that the agreement has been of great benefit to the operators and the union and that most disputes have been resolved by the use of the grievance machinery."

Burger, Circuit Judge, in the dissenting opinion in the *International* case, 257 F. 2d 211, at 218-219, stated:

"The majority opinion rests its reversal of the Labor Board action on the ground that the collective bargaining contract *does not* contain an affirmative 'no strike' clause, but it overlooks what the contract *does* contain, *namely a solemn agreement by both parties to submit all disputes* to an agreed process of negotiation leading finally to a binding arbitration if the preliminary steps are not successful. The mutual promises to settle all grievances by this peaceful process are plain and unambiguous, and this indeed is not disputed."

* * * * * * *

"I cannot accept the view of the majority that these explicit detailed contractual provisions represent merely a loose 'gentleman's agreement' that the parties will *try* to resolve their problems without strikes or lockouts; to me they are the words of contracting parties who intend to set up binding provisions for what experience has taught is effective machinery for the day to day bargaining between management and employees. They are the words of enlightened union and management leaders who intend to abandon brutal and wasteful methods and substitute negotiation and arbitration as a means of settling disputes." (Italics ours)

It is apparent that there was a clear conflict of opinion in the District Circuit itself as to the construction and effect of subsection 3 of the "Miscellaneous" article of the 1952 Agreement. Briefly stated, the issue is whether said covenant of the parties in the 1952 Agreement constituted a binding obligation upon the part of both the employer and the employees or was, as Madden, Judge, stated, merely a "gentleman's agreement".

The issue whether the aforesaid covenant or analagous covenants constituted a binding obligation not

to strike was raised and answered in the affirmative in the following cases:

Garmeada Coal Co. v. *International Union of the United Mine Workers, etc.* (D.C., E.D. Ky.), 122 F. Supp. 512, affirmed (C.A. 6, 1956), 230 F. 2d 945;

United Construction Workers v. *Haislip Baking Co.* (C.A. 4, 1955), 223 F. 2d 872, 873;

W. L. Mead, Inc. v. *International Brotherhood of Teamsters, etc.* (D.C., Mass.), 126 F. Supp. 466, affirmed (C.A. 1, 1956), 230 F. 2d 576;

Lewis v. *Benedict Coal Corp.* (C.A. 6, 1958), 259 F. 2d 346, affirmed 80 S. Ct. 489.

Each of the foregoing cases involved actions by employers against unions for damages due to strikes for alleged violations of contracts which the employer contended were cognizable under the grievance and arbitration machinery set up in said contracts, even though the contracts contained no express "no strike" clause. Each action was brought under Section 301 of the Act, 29 U.S.C.A., Section 185. In each case, the Court of Appeals for the First, Fourth and Sixth Circuits recognized that a strike to settle a dispute which was cognizable under the grievance and arbitration procedure provided in the contract constituted a breach of such contract for which damages were recoverable under Section 301 of the Act. In each case, the respective Court of Appeals recognized that the Union was under a duty to exercise its best efforts to maintain the integrity of the contract and to prevent the strike. In all but the *Lewis* case, recovery was denied only because there was a lack of evidence that the Interna-

tional Union had either induced or ratified the strike. In the instant case, it was conceded (for the purpose of entry of the summary judgment) that the International Union had either induced the strike or had ratified, adopted and prolonged it or, although requested, had refused to settle the dispute under the grievance and arbitration procedure provided in the 1952 agreement.

In the *Garmeada* case, *supra*, involving the construction of the 1952 Agreement between the United Mine Workers and the coal operator, the UMW recognized that a strike to settle disputes which were cognizable under the agreement constituted a violation of the contract. The UMW defended the action against it on the contention that there was neither claim nor proof that the strike there involved was called, authorized or ratified by resolution or other action of the Union or by its District 19. The defendants therein challenged the plaintiff's claim to the relief sought against them on the ground of the absence of such proof (122 F. Supp. 512, at 517). The district court in the *Garmeada* case stated that there was overwhelming proof of urgent appeals by the District representative to the men to discontinue their strike and return to their work. In the instant case, it is conceded that the International Union did not appeal to the men to discontinue the strike and return to their work, but that, on the contrary, it encouraged and prolonged the strike.

The Court of Appeals for the Fourth Circuit in the *Haislip* case, *supra*, squarely recognized that although the collective bargaining contract therein involved (the 1950 agreement), did not contain a "no strike" clause, but did require the settlement of disputes and grievances by arbitration procedure, that a strike without

following such procedure was necessarily a breach of contract under the Labor Management Relations Act, 1947, Sec. 301, 29 U.S.C.A., Sec. 185(c) (223 F. 2d 872, 876-877). At pages 876-877, Parker, Chief Judge, stated:

> "We think that this passage of the charge stated the applicable law correctly. *It is argued that a strike could not constitute a breach of a contract which did not contain a no strike clause; but we think it clear that* the purpose of the contract was to require the settlement of disputes and grievances by a procedure which would not cause the disruption of business that would necessarily result from a strike and *that a strike without following such procedure was necessarily a breach.* (Citing cases) It is argued also that the right to strike without becoming guilty of breach of the contract is preserved by the language which prescribes 'the full use of free collective bargaining as heretofore known and practiced', as an alternative to the use of the grievance procedure and arbitration prescribed by the contract. Collective bargaining, however, has the well understood meaning in the law of settling disputes by negotiation between employer and the representative of the employees. (Citing cases) When we enter orders directing parties to bargain collectively, we are certainly not directing anyone to strike." (Italics ours)

The Court of Appeals for the Fourth Circuit reversed judgment for the employer therein solely on the ground that the evidence was insufficient to show that the Union had adopted, encouraged or prolonged the strike. At page 879, the Fourth Circuit said:

> "Defendants cannot be held to liability under such circumstances unless under their contract they are liable for strikes which they have not authorized and do not sanction; and we cannot find any such liability in the contract."

It is conceded in the instant case that the defendants had either *authorized* or *sanctioned,* or adopted, ratified, encouraged or prolonged the strike.

The *W. L. Mead, Inc.* case, *supra,* also involved the liability of a union for a violation of a collective bargaining agreement which did not contain an express "no strike" clause, but did contain arbitration machinery for the adjudication of disputes. The Court of Appeals for the First Circuit in an opinion by Magruder, Chief Judge, 230 F. 2d 576, held that the provision in the collective bargaining agreement between the employer and the labor union that arbitration machinery set forth in the agreement should be the exclusive means of adjudicating all matters meant that there should be no strike as to any matter appropriate under the agreement to be arbitrated, even though the agreement contained no express "no strike" clause. Chief Judge Magruder stated, 230 F. 2d 576, at 583:

> "Notwithstanding the absence of a specific no-strike clause, the district court rules (126 F. Supp. 467), as a matter of law that *the arbitration article of the agreement* providing that the machinery there set forth 'shall be the exclusive means of adjudicating all matters', *was ambiguous and 'that its meaning was that there should be no strike as to any matter appropriate under the agreement to be arbitrated,* at least while the employer was not in default as to its own observation of the arbitration requirements.' We agree with this conclusion." (Italics ours)

In *Lewis* v. *Benedict Coal Corp., supra,* this specific question was reviewed by the Court of Appeals for the Sixth Circuit in an opinion by Stewart, Circuit Judge (now an Associate Judge of the United States Supreme Court). The basic question involved on the

appeal was whether any or all of the strikes involved therein violated the agreement of 1950-1952. Mr. Justice Stewart, then Circuit Judge, stated, at 259 F. 2d 346, at 351:

> "Determination of this preliminary issue thus depends upon what effect the agreement to settle all local disputes in accordance with the 'Settlement of Local and District Disputes' procedure had upon the right to strike which was expressly preserved in the 1950-52 agreement. The question is not without precedent. The same basic issue was thoroughly considered in United Construction Workers v. Haislip Baking Co., 4 Cir. 1955, 223 F. 2d 873; W. L. Mead, Inc. v. International Brotherhood of Teamsters, etc., D.C. 126 F. Supp. 466; affirmed 1 Cir. 1956, 230 F. 2d 576; and International Union, United Mine Workers of America v. National Labor Relations Board, D.C. Cir., 257 F. 2d 211. With all respect for the majority view expressed in the latter decision, we agree with the dissenting judge in that case, and with the decisions in the Haislip and Mead cases, that a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement.
>
> This conclusion does not make meaningless the express abrogation of a no strike clause in the 1950-52 agreement. *The right to strike was preserved with respect to all disputes not subject to settlement by other methods made exclusive by the agreement.* Moreover, the Unions remained free from liability for spontaneous or 'wildcat' strikes. Such spontaneous strikes would be the kind of 'stoppages' and 'suspensions of work' which the agreement made subject to the settlement procedure therein provided." (Italics ours)

The decision in the *Lewis* case was reviewed on certiorari by the United States Supreme Court. Mr. Justice Stewart, who had in the interim been appointed to the Supreme Court, took no part in the consideration or the decision of the case. The Supreme Court was equally divided in the Union's petition No. 19, wherein certiorari had been granted. The Supreme Court accordingly, held as follows (80 S. Ct. 489, at 493):

> "In No. 19, the Court is equally divided. The judgment of the Court of Appeals, so far as it sustains the holding of the District Court that the Union violated the collective bargaining agreement, is therefore affirmed."

The 1952 Agreement involved express, obligatory and exclusive procedures for the settlement of disputes. The calling or use of a strike as an alternative method of settling the dispute which the District Court and the appellee have conceded was cognizable under the grievance procedure constituted a violation of the agreement. The intent and purpose of the collective bargaining contract involved, as shown in the Preamble to the 1950 contract, which was carried over into the 1952 Agreement, is to promote and improve industrial and economic relationship in the bituminous coal industry. The interpretation rendered by the First, Fourth and Sixth Circuits is in keeping with this intent and purpose, and with the applicable legal principles requiring a regard for such intent and purpose. The adoption of the District Court's interpretation of the contract would make meaningless the express language of the 1952 Agreement which requires that all disputes be settled exclusively by the machinery provided in the contract.

The UMW's basic contention is that the clause in the 1950 contract which "rescinded, abrogated and made null and void" previous "no-strike" clauses gave to the Union a positive right to strike even though the strikes are used as a method of settling disputes. Mile Branch submits that the rescission clause in the 1950 contract merely puts the parties in the same position as though there had been no previous "no-strike" clauses. This rescission clause gave no right to strike if the strike is used to settle disputes in violation of other positive provisions on the contracts.

The District Circuit relied upon the majority opinion in the *International* case, *supra*. The interpretation of the contract by the two judges constituting the majority in that case is at variance with the interpretation given the same contract by the dissenting judge, and the National Labor Relations Board in that same case, and by the First, Fourth and Sixth Circuits in the *Garmeada, Haislip, Lewis* and *W. L. Mead, Inc.* cases, *supra*. The *International* case relied upon by the court below also fails to give effect to all the language and to every clause of the contracts here involved.

As argued before the Supreme Court in the *Lewis* case, the issue is not whether a mere strike is a breach of the 1950 and 1952 contracts, but whether the use of strikes to settle disputes or enforce demands cognizable under the grievance procedure set up in said contracts constitutes a violation of the contracts. Petitioner contends that strikes called or used or ratified, encouraged or prolonged for such purposes are direct violations of positive provisions of the contract.

The interpretation by the First, Fourth and Sixth Circuits in the aforesaid cases is in keeping with the purpose and intent of the contracts. The Preamble to

the 1950 contract, which was preserved by the 1952 contract, sets out its intent and purpose and, among other things, provides:

> "It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this agreement."

The intent and purpose of the contract is that the industrial and economic relationship in the bituminous coal industry is promoted by the settlement of disputes by contractual grievance machinery rather than by strike methods. To construe the contract so as to permit the use of strikes as an alternative method of settling disputes is in derogation of the positive and clear terms of the contract and in direct opposition to its intent and purpose.

The adoption of the UMW's construction of 1952 contract would make meaningless the grievance machinery clauses of the contracts and subsection 3 of the "Miscellaneous" section of the 1952 contract. These portions of the contract use positive words, and the duties assumed thereunder are not mere implications. The third paragraph in the "Miscellaneous" section of the 1952 contract has a positive meaning. To imply that the contracts permit the use of strikes as an alternative method of settling disputes would void these express and positive provisions. Such an interpretation would be at variance with settled principles of law: See 12 *Am. Jur.* 774, 776; *Restatement of the Law of Contracts, Sections* 236 (a) *and* (b).

The UMW relies heavily on the cancellation of previous "no-strike" clauses in the 1950 contract and argues that said clauses make strike activities permissive even though the strikes are used to settle disputes with the employer which are cognizable under the grievance machinery set up in the contract and even though such use of strikes contravenes the positive provisions contained in the arbitration section of the 1950 contract and the "Miscellaneous" section of the 1952 contract.

The basic error in the UMW's position is that it ignores the meaning of the words "rescinded, canceled, abrogated and made null and void". To "rescind" a previous "no-strike" clause is not to positively state that the Union is permitted to strike to settle disputes cognizable under the grievance machinery set up in the contract in contravention of other positive parts of the contract. The words, "rescinded, canceled, abrogated and made null and void" merely void or delete previous "no-strike" clauses from the 1950 Agreement and put the parties in just the same position they would be in if no such clause had been in the previous contracts.

Petitioner submits that the UMW's contention that the grievances and arbitration procedures prescribed in the contract should not be construed as limiting the Union's right to strike over matters subject to those procedures, because subsection 1 of the "Miscellaneous" section expressly rescinded all "no-strike" and similar clauses contained in the contracts prior to 1947 and incorporated by reference in later contracts, ignores all theories of contractual liability. The 1952 Agreement was both a contract and also a "gentlemen's agreement"; it was not merely an unenforceable "gentlemen's agreement". Obviously, a cancellation of

the "no strike" and similar clauses in this manner would not clearly express an intention to reserve the right to strike. In short, the issue is precisely the same as it was in the *Garmeada, Haislip, Lewis* and *W. L. Mead, Inc.* cases, in which the Union had refused to agree to the employer's request for a "no-strike" clause.

The 1950 contract, as amended in 1952, is the one with which we are concerned in this case. Although the amendment omitted the "*best efforts*" clause, there is no indication that the parties thereby intended to permit strikes. The "*best efforts*" clause was deleted because the International Union did not want to be told by words what disciplinary action, if any, it must take against its members to bring them back to work.

Further, the fact that the 1952 amendments dropped the word "*exclusive*" from the clause providing for the settlement of disputes under the grievance machinery did not give the Union the right to use a strike to settle a dispute cognizable under the grievance procedure. The UMW overlooks the fact that although the word "*exclusive*" was omitted, the phrase "which are not settled by agreement" was added to the "Miscellaneous" section to make it clear that disputes which are settled informally need not be processed under the formal procedures of the contract.

The most significant fact that the UMW overlooks in the contract of 1950, as amended in 1952, is that the 1952 contract provided that "*all* disputes" cognizable under the grievance procedure "shall be settled" thereunder and in conclusion stated that the purpose of that section was "to provide for the settlement of *all* such disputes . . . through the (grievance) machinery . . . and by collective bargaining without recourse to the

courts." Petitioner submits that there is no distinction between a clause providing that "all" disputes "shall" be settled under the grievance and arbitration machinery (in the 1952 contract) and one providing that disputes will be settled "exclusively" by means of such machinery (in the 1950 contract).

Another significant factor overlooked in the construction of the 1952 contract is the fact that the UMW and the employer retained their covenant to maintain the integrity of the contract and that said covenant appears as part of the subsection requiring that all disputes shall be settled under the grievance and arbitration machinery. The "integrity" clause is more than a mere "gentlemen's agreement". It is a contractual covenant and obligation upon the part of both parties to the contract.

In conclusion, petitioner respectfully submits that to interpret subsection 3 of the "Miscellaneous" section of the 1952 contract as a mere "gentlemen's agreement" would render inoperative the positive provisions in the contract relating to settlement of disputes. This interpretation by the two judges constituting the majority in the *International* case, *supra*, is not supported by the opinion of the dissenting judge, Judge Burger, in the same case. It is also at variance with the construction of similar covenants by the Court of Appeals for the First, Fourth and Sixth Circuits in the *W. L. Mead, Inc.*, *Garmeada*, *Haislip* and *Lewis* cases.

Petitioner, therefore, respectfully submits that a strike to settle a dispute which the collective bargaining agreement involved provided shall be settled by an exclusive and obligatory alternative procedure con-

stituted a violation of the agreement under Section 301 of the Labor Management Relations Act, 29 U.S.C.A., Section 185.

CONCLUSION

For the foregoing reasons, petitioner prays that this Petition for Writ of Certiorari should be granted and that a Writ of Certiorari be issued to review the decision and judgment of the U. S. Court of Appeals for the District of Columbia Circuit entered in said case at No. 15,907 on January 21, 1961, as aforesaid.

Respectfully submitted.

ALEXANDER L. SUTO,
SAMUEL L. GOLDSTEIN,
SUTO, POWER, GOLDSTEIN & WALSH

THURMAN HILL,

Attorneys for Petitioner

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15907

MILE BRANCH COAL COMPANY, *Appellant*

v.

UNITED MINE WORKERS OF AMERICA, *Appellee*

Appeal from the United States District Court for the District of Columbia

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Decided January 12, 1961

Mr. Samuel L. Goldstein, of the bar of the Supreme Court of Pennsylvania, *pro hac vice*, by special leave of court, with whom *Mr. Thurman Hill* was on the brief, for appellant.

Mr. John J. Wilson, with whom *Messrs. Willard P. Owens* and *William E. Rollow* were on the brief, for appellee.

Before, MR. JUSTICE BURTON, retired,* PRETTYMAN and FAHY, *Circuit Judges*.

PER CURIAM: In the District Court the Mile Branch Coal Company, appellant, sued the United Mine Workers of America, appellee, for damages for alleged breach of provisions of the National Bituminous Coal Wage Agreement of 1950, as amended September 29, 1952, to which appellant and appellee were parties. Insofar as now material the theory of the action was that appellant's employees

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* Sitting by designation pursuant to Sec. 294(a), Title 28, U.S. Code.

struck its coal mine in violation of provisions of the Agreement relating to the manner in which disputes were to be settled, and that appellee induced and encouraged the strike. The action was filed pursuant to section 301(a) of the Labor Management Relations Act[1] authorizing suits by and against labor organizations for violation of collective bargaining contracts.

Appellee's motion for summary judgment was granted by the District Court upon the authority of this court's decision in *International Union, UMW* v. *NLRB*, 103 U.S. App. D.C. 207, 257 F.2d 211, where we held that a strike in similar circumstances was not a breach of the Agreement. Contra, *Lewis* v. *Benedict Coal Corp.*, 259 F.2d 346 (6th Cir. 1958), *aff'd by an equally divided Court*, 361 U.S. 459.

Upon the authority of *International Union, UMW* v. *NLRB*, *supra*, the order of the District Court granting appellee's motion for summary judgment is

Affirmed.[2]

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[1] § 301(a), 61 Stat. 156 (1947), 29 U.S.C. 185(a) (1958).

[2] For previous aspects of the litigation see *Mile Branch Coal Co.* v. *United Mine Workers*, 105 U.S. App. D.C. 321, 266 F. 2d 919.

APPENDIX B

Statutes Involved

Labor Management Relations Act of June 23, 1947, c. 120, Title III, Section 301, 61 Stat. 156; 29 U.S.C.A., Section 185.

29 U.S.C.A., Section 185. *Suits by and against labor organizations—Venue, amount and citizenship*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Determination of question of agency

(c) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1957; 3:47 p.m., E.D.T., c. 120, Title III, Section 301, 61 Stat. 156.

IN THE

Supreme Court of the United States

[illegible]

No. [illegible]

[illegible]

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MEMORANDUM OF RESPONDENT IN OPPOSITION

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 758

MILE BRANCH COAL COMPANY, *Petitioner,*

v.

UNITED MINE WORKERS OF AMERICA, *Respondent.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MEMORANDUM OF RESPONDENT IN OPPOSITION

The decision of the United States Court of Appeals for the District of Columbia Circuit, concerning which petitioner seeks a writ of certiorari, affirmed the action of the District Court in granting respondent's motion for summary judgment. The District Court granted the motion because of the binding effect of the decision of the District of Columbia Circuit in *International Union, U.M.W.A.* v. *N.L.R.B.* (1958) 103 U.S. App.

207, 257 F. 2d 211. Thereupon, the District of Columbia Circuit affirmed upon the same authority. In a brief per curiam affirmance, the District of Columbia Circuit pointed out that *Lewis* v. *Benedict Coal Corp.* (6 Cir. 1958) 259 F. 2d 346, was *contra*, but that that decision had been affirmed by an equally divided Court, 361 U.S. 459, 4 L. ed 2d 442.[1]

Respondent here had been petitioner in the *Benedict Coal* case (No. 563 October Term 1958,[2] 359 U.S. 905, 3 L. ed 2d 570), and had urged the granting of the writ there, *inter alia*, because of the conflict between the Sixth Circuit and the District of Columbia Circuit, in the respective cases mentioned above, over the question of whether a work stoppage violated the collective bargaining agreement. This Court apparently acted in the light of that conflict, since in its opinion in *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, 4 L. ed 2d 442, it stated:

> "We granted the trustees' petition, No. 18, and also the union's petition, No. 19, except that we limited the latter grant to the question whether the strikes and stoppages complained of by Benedict violated the collective bargaining agreement. 359 US 905, 3 L ed 2d 570, 79 S Ct 580, 581." (p. 464 of 361 U.S., p. 446 of 4 L. ed 2d)

Petitioner here urges the granting of the writ because of the same conflict (Pet. 19), but this time

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[1] This Court has said that affirmance by an equally divided Court "prevents the case from becoming an authority for the determination of other cases, either in this or in inferior courts." *Hertz* v. *Woodman* (1910) 218 U.S. 205, 213, 54 L. ed 1001, 1005. *Accord: United States* v. *Fink* (1942) 315 U.S. 203, 86 L. ed 796.

[2] The case was transferred to the October Term, 1959 calendar and became No. 19

the vehicle for the petition is the decision of the District of Columbia Circuit, rendered in the instant-captioned case, which relies entirely upon its earlier decision with which the Sixth Circuit was in conflict.[3]

The case at bar and the cases of *International Union, U.M.W.A.* v. *N.L.R.B.* (1958) 103 U.S. App. 207, 257 F. 2d 211 and *Lewis* v. *Benedict Coal Corp.* (6 Cir. 1958) 259 F. 2d 346, present identical issues respecting the collective bargaining agreements in the bituminous coal industry through the 1952 amendment, namely, whether an alleged strike or work stoppage constitutes a breach of the Agreement for which a coal operator, signatory thereto, may maintain an action under Section 301 of the Labor Management Relations Act (29 U.S.C. 185). The District of Columbia cases answered the question in the negative, while the Sixth Circuit case reached the opposite result.

Mr. Justice Stewart (then Circuit Judge Stewart) had written the opinion of the Sixth Circuit in the

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[3] Petitioner contends that the instant decision is also in conflict with cases in the First and Fourth Circuits and another case in the Sixth Circuit (Pet. 19), namely, *United Construction Workers* v. *Haislip Baking Co.* (4 Cir. 1955) 223 F. 2d 872; *International Brotherhood of Teamsters, etc.* v. *W. L. Mead, Inc.* (1 Cir. 1956) 230 F. 2d 576, and *Garmeada Coal Co.* v. *International Union of the United Mine Workers, etc.* (D.C. E.D. Ky.) 122 F. Supp. 512, aff'd (6 Cir. 1956) 230 F. 2d 945.

Respondent submits that these cases did not present the same issue as the one involved here, and thus are not in conflict.

In the *Haislip* and *Mead* cases, the bargaining agreements were different from the one in the case at bar; and in the *Garmeada* case, the 1952 amendment was not involved. Thus, the statement in the second paragraph on page 29 of the petition, referring to "the same contract", is inaccurate in relation to the citation of the *Garmeada*, *Haislip* and *Mead* cases; and the references on page 24 of the petition to the "1952 Agreement" in the *Garmeada* case, and to "the 1950 Agreement" in the *Haislip* case, are incorrect.

Benedict Coal case,[4] and, therefore, took no part in the consideration of this respondent's petition for certiorari in that case, nor in the decision itself (No. 19, October Term, 1959). The other eight Justices, all of whom are presently sitting, were equally divided, the opinion stating:

> "In No. 19, the Court is equally divided. The judgment of the Court of Appeals, so far as it sustains the holding of the District Court that the union violated the collective bargaining agreement, is therefore affirmed." (p. 464 of 361 U.S., p. 446 of 4 L. ed 2d)

In light of the foregoing, petition for certiorari in the instant case should be denied.

Respectfully submitted,

JOHN J. WILSON
815 - 15th Street, N. W.
Washington 5, D. C.

WELLY K. HOPKINS
HARRISON COMBS
WILLARD P. OWENS
900 - 15th Street, N. W.
Washington 5, D. C.

Attorneys for Respondent

March 14, 1961

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[4] In the *Benedict* decision in the Sixth Circuit, Mr. Justice Stewart relied upon the *Haislip* and *Mead* cases as precedents and preferred the dissenting opinion in the *International Union* case in the District of Columbia Circuit. Respondent respectfully submits that the error in the *Benedict* case and in the dissenting opinion in the *International Union* case (which also relied upon the *Haislip* and *Mead* cases) arises from the fact that the very material contractual history of the instant bargaining agreement—necessarily not involved in the *Haislip* and *Mead* cases—was not regarded as important and controlling.

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